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6 LILLIAN CHRISTENSEN,

7 Plaintiff,

8 No. C 11-03864 JSW

9 v.
10 ROBERT E COTNOIR, et al.,

11 **ORDER DENYING MOTION FOR**
12 **LEAVE TO AMEND**

13 Defendants.

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15 Now before the Court is the motion filed by Defendant and Third-party Plaintiff Robert
16 E. Cotnoir (“Cotnoir”) for leave to amend his third-party complaint against Third-Party
17 Defendant Kenneth Steven Lundie (“Lundie”). The Court determines that this matter is
18 appropriate for disposition without oral argument and is deemed submitted. *See* Civ. L.R. 7-
19 1(b). Accordingly, the hearing set for February 21, 2014 is HEREBY VACATED. Having
20 carefully reviewed the parties’ papers and considering their arguments and the relevant
21 authority, and good cause appearing, the Court hereby denies Cotnoir’s motion for leave to
22 amend.

23 **BACKGROUND**

24 On May 30, 2012, Cotnoir filed a third-party complaint against Lundie for
25 indemnification of any liability of Cotnoir to Plaintiff Lilian Christensen on the wrongful death
26 claims. Cotnoir now seeks leave to amend to add a claim for declaratory relief regarding the
27 ownership of fishing permits.

ANALYSIS

2 Federal Rules of Civil Procedure 15(a) provides that leave to amend “shall be freely
3 given.” See Fed. R. Civ. Proc. 15(a). Courts consider the following factors when determining
4 whether a motion for leave to file an amended complaint should be granted: (1) bad faith; (2)
5 undue delay; (3) prejudice to the opposing party; and (4) futility of amendment. *DCD*
6 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). However, each factor is not
7 given equal weight. *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). “Futility of
8 amendment can, by itself, justify the denial of a motion for leave to amend.” *Id.*

9 Cotnoir seeks leave to amend his third-party complaint against Lundie to add a
10 declaratory relief claim to adjudicate the ownership of fishing permits. However, Federal Rule
11 of Civil Procedure Rule 14(a) authorizes impleader of a third-party defendant only when the
12 “defendant is attempting to transfer to the third-party defendant the liability asserted against
13 him by the original plaintiff.” *Stewart v. Am. Int'l Oil & Gas Co.*, 845 F.2d 196, 200 (9th Cir.
14 1988) (quotation marks and citation omitted). If the proposed third-party claim is not for
15 indemnity, impleader is inappropriate, even if the alleged third-party claim arises from the same
16 transaction or set of facts as the original claim. Here, Cotnoir has not shown that the alleged
17 dispute regarding the ownership of the fishing permits arises out of the same transaction or
18 occurrence of the wrongful death claims against Cotnoir. Moreover, this requested claim for
19 declaratory relief is not for indemnity. Accordingly, it is not a permissible third-party claim.
20 Granting leave to amend would be futile. Therefore, the Court DENIES the motion for leave to
21 amend.

IT IS SO ORDERED.

24 || Dated: February 11, 2014

Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

LILLIAN CHRISTENSEN,

Case Number: CV11-03864 JSW

Plaintiff,

CERTIFICATE OF SERVICE

V.

ROBERT E COTNOIR et al,

Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

15 That on February 11, 2014, I SERVED a true and correct copy(ies) of the attached, by
16 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter
listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an
inter-office delivery receptacle located in the Clerk's office.

18 | Ken Lundie
19 | 1753 NE Yaquina Heights Dr.
| Newport, OR 97365-9568

Dated: February 11, 2014

Jennifer Ottolini

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk